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Buddy's Parking Company, LLC and Teamsters Local 727. Case 13–CA–202604

March 14, 2018

DECISION AND ORDER

BY CHAIRMAN KAPLAN AND MEMBERS PEARCE
AND MCFERRAN

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by Teamsters Local 727 (the Union) on July 18, 2017, the General Counsel issued a complaint on November 16, 2017, against Buddy's Parking Company, LLC (the Respondent) alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. The Respondent failed to file an answer.

On December 22, 2017, the General Counsel filed with the Board a Motion to Transfer Proceedings to the Board and Motion for Default Judgment. Thereafter, on January 4, 2018, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by November 30, 2017, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated December 12, 2017, notified the Respondent that unless an answer was received by December 19, 2017, the Region would file a motion for default judgment. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been an Illinois limited liability company with an office and place of business in Chicago, Illinois, and has been engaged in the business of managing parking garages.

In conducting its operations during the calendar year ending December 31, 2016, the Respondent derived gross revenues in excess of \$500,000 and received at its Illinois facilities products, goods, materials, and services valued in excess of \$5000 directly from points outside the State of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of the Respondent within the meaning of Section 2(13) of the Act:

Carlos Castillo	Owner
Ramona Vega	Operations Manager

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All Cashiers, hikers, attendants, porters, maintenance men/custodians, drive men, washers, collectors, customer service representatives (excluding those who do sales and/or marketing), drivers, dispatchers, bellmen, doormen and supervisors who perform bargaining unit work, but excluding clerical employees, guards, professional employees and supervisors as defined in the National Labor Relations Act.

Since about November 1, 2011, and at all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from November 1, 2011, to October 31, 2016.

At all times since November 1, 2011, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About April 14, 2017, the Union requested that the Respondent bargain collectively about the effects of discharging all eight bargaining unit employees at its 2 East Oak Street, Chicago, Illinois, location.

Since about April 14, 2017, the Respondent has failed and refused to bargain collectively about the effects of the decision to discharge the unit employees.

About June 22-23, June 28, and July 5, 2017, respectively, the Union requested that the Respondent respond and process two grievances related to change of address form and back dues owed.

Since about July 5, 2017, the Respondent has failed and refused to bargain collectively about the grievances described above.

The subjects set forth in the paragraphs above relate to the wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

Since about June 28, July 3 and 10, 2017, the Union has requested by e-mail that the Respondent furnish the Union with a current seniority list of the Respondent's parking employees.

The information requested by the Union, as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about July 10, 2017, the Respondent has failed and refused to furnish the Union with the requested information described above.

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By the conduct described above the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(5) and (1) of the Act. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, to remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of the Respondent's decision to discharge all eight bargaining unit employees at its 2 East Oak Street, Chicago, Illinois, location, we shall order the Respondent to bargain with the Union, on request, about the effects of its decision. As a result of the Respondent's unlawful conduct, however, the unit employees have been denied an opportunity to bargain

through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our bargaining order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violation and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the eight discharged bargaining unit employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).¹

Thus, the Respondent shall pay its unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union as to the effects of the discharge of the eight unit employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date they were discharged to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings that the unit employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6

¹ See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990).

(2010). Additionally, we shall order the Respondent to compensate unit employees for any adverse tax consequences of receiving lump-sum backpay awards and to file a report with the Regional Director for Region 13 allocating backpay to the appropriate calendar years for each employee, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to bargain collectively with the Union by failing and refusing to respond and process two grievances related to change of address form and back dues owed, we shall order the Respondent, on request, to respond to and process the two grievances.

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with relevant and necessary information requested on June 28, July 3 and 10, 2017, we shall order the Respondent to provide the Union with the requested information.

ORDER

The National Labor Relations Board orders that the Respondent, Buddy's Parking Company, LLC, Chicago, Illinois, its officers, agents, successors, and assigns, shall take the following affirmative action necessary to effectuate the policies of the Act.

1. Cease and desist from

(a) Failing and refusing to bargain collectively with Teamsters Local 727 (the Union) as the exclusive collective-bargaining representative of the employees in the unit set forth below, about the effects of the Respondent's decision to discharge all eight bargaining unit employees at its 2 East Oak Street, Chicago, Illinois location:

All Cashiers, hikers, attendants, porters, maintenance men/custodians, drive men, washers, collectors, customer service representatives (excluding those who do sales and/or marketing), drivers, dispatchers, bellmen, doormen and supervisors who perform bargaining unit work, but excluding clerical employees, guards, professional employees and supervisors as defined in the National Labor Relations Act.

(b) Failing and refusing to bargain collectively with the Union by failing and refusing to respond to and process two grievances related to change of address form and back dues owed.

(c) Refusing to bargain collectively with the Union by failing and refusing to furnish the Union with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes of the Act.

(a) On request, bargain collectively and in good faith with the Union about the effects of the Respondent's decision to discharge all eight bargaining unit employees at its 2 East Oak Street location, and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Pay the eight discharged bargaining unit employees formerly employed at the Respondent's 2 East Oak Street location their normal wages for the period set forth in the remedy section of this decision, with interest.

(c) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 13, within 21 days of the date of the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(d) On request, respond to and process two grievances related to change of address form and back dues owed.

Furnish to the Union in a timely manner the information requested by the Union on June 28, July 3 and 10, 2017.

(e) Within 14 days after service by the Region, post at its Chicago, Illinois facilities copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed its facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

and former employees employed by the Respondent at any time since April 14, 2017.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 14, 2018

Marvin E. Kaplan, Chairman

Mark Gaston Pearce, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED AND MAILED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively with Teamsters Local 727 (the Union) as the exclusive collective-bargaining representative of our employees in the unit set forth below, about the effects of our decision to discharge all eight bargaining unit employees at our 2 East Oak Street, Chicago, Illinois location:

All Cashiers, hikers, attendants, porters, maintenance men/custodians, drive men, washers, collectors, customer service representatives (excluding those who do sales and/or marketing), drivers, dispatchers, bellmen,

doormen and supervisors who perform bargaining unit work, but excluding clerical employees, guards, professional employees and supervisors as defined in the National Labor Relations Act.

WE WILL NOT fail and refuse to bargain collectively with the Union by failing and refusing to respond to and process two grievances related to change of address form and back dues owed.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain collectively and in good faith with the Union about the effects of our decision to discharge all eight bargaining unit employees at our 2 East Oak Street location, and WE WILL reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL pay the eight discharged bargaining unit employees formerly employed at our 2 East Oak Street location their normal wages for the period set forth in the Decision and Order of the National Labor Relations Board, with interest.

WE WILL compensate our affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards and WE WILL file with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay to the appropriate calendar years for each employee.

WE WILL, on request, respond to and process two grievances related to change of address form and back dues owed.

WE WILL furnish to the Union in a timely manner the information requested by the Union on June 28, July 3 and 10, 2017.

BUDDY'S PARKING CO.

The Board's decision can be found at <https://www.nlr.gov/case/13-CA-202604> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

